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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SAN FRANCISCO BAYKEEPER, a non-profit
corporation,

Plaintiff,

v.

SAN RAFAEL ROCK QUARRY, INC.,

Defendant.

Case No.: 3:15-cv-02590-MMC

[PROPOSED] CONSENT DECREE

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 *et seq.*)

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WHEREAS, on March 6, 2015, Baykeeper served SRRQ, The Dutra Group, the Administrator of the U.S. Environmental Protection Agency (“EPA”), the Executive Director of the State Water Resources Control Board (“State Water Board”), the Executive Officer of the Regional Water Quality Control Board, San Francisco Bay Region (“Regional Water Board”), and the Regional Administrator of EPA Region IX, with a notice of intent to file suit (“60-Day Notice”) under Section 505(b)(1)(a) of the

1 Federal Water Pollution Control Act ("Clean Water Act" or "the Act"), 33 U.S.C. § 1365(b)(1)(A),
2 alleging violations of the Act and the Industrial Stormwater Permit at the Facility;

3 WHEREAS, on June 10, 2015, Baykeeper filed a complaint ("Complaint") alleging certain
4 violations of the Act and the Industrial Stormwater Permit at the Facility;

5 WHEREAS, on December 16, 2015, Baykeeper filed a notice of voluntary dismissal of The Dutra
6 Group.

7 WHEREAS, SRRQ denies all allegations and claims contained in the Complaint and reserves all
8 rights and defenses with respect to such allegations and claims;

9 WHEREAS, the Parties believe it is in their mutual interest and choose to resolve in full
10 Baykeeper's allegations in the 60-Day Notice and Complaint through settlement and avoid the cost and
11 uncertainties of further litigation;

12 NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING PARTIES,
13 AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:

14 **I. BEST MANAGEMENT PRACTICES**

15 1. In order to further reduce or further prevent pollutants associated with industrial activity from
16 discharging via stormwater to the waters of the United States, SRRQ shall implement additional
17 appropriate structural and non-structural Best Management Practices ("BMPs") to, at a minimum,
18 comply with the requirements of the Industrial Stormwater Permit.

19 2. **Site Map:** Within thirty (30) days of the Effective Date, SRRQ shall update the Site Map
20 included in the Facility SWPPP. The Site Map shall clearly denote the topography and the direction of
21 stormwater flow for each drainage area of the Facility. The Site Map shall also identify property
22 boundaries, known or suspected drop inlets, ground type (pervious or impervious), berms and the
23 materials they are composed of, any permanent structures and features, discharge points, and all other
24 physical structures or items relevant under the Industrial Stormwater Permit and in this Consent Decree.

25 3. **Designation and Protocol for All Sampling Locations:** Within thirty (30) days of the Effective
26 Date, SRRQ shall update the Facility SWPPP to fully describe any modifications to the discharge or
27 sampling locations, as shown on the Site Map and described in the existing SWPPP ("Designated
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Discharge Points”). While the Consent Decree is in effect, if SRRQ makes any significant change in facility layout (e.g., new building, change in storage locations, boundary change, etc.), SRRQ shall update the Site Map within forty-five (45) days and submit the revised Site Map to Baykeeper, consistent with the requirements of Section I.

4. **Non-Structural Best Management Practices.** Beginning on the Effective Date, SRRQ shall implement the following non-structural BMPs:

a. **Storm Drain Inlet/Catch Basin Best Management Practices:**

i. Storm Drain Inlet/Designated Discharge Point Inspections: Within thirty (30) days of the Effective Date and between September 1 and October 1 of each subsequent year, SRRQ shall inspect any storm drain inlets, detention basins, Designated Discharge Points, filtration/treatment devices, and other BMPs in place at the Facility. SRRQ shall promptly clean, as needed, each drain inlet, catch basin, Designated Discharge Point, filtration/treatment device, and other BMPs in order to remove any accumulated dust, sediment, solids, or debris.

ii. Storm Drain Inlet/Designated Discharge Point Maintenance and Cleaning: On a monthly basis between October 1 to May 30 of each year (“Wet Season”), SRRQ shall inspect all storm drain inlets, catch basins, Designated Discharge Points, filtration/treatment devices, and other BMPs in place at the Facility to ensure that they are not in a condition that would materially impair their efficacy, and clean out accessible deposited sediment or debris. SRRQ shall properly dispose of any dust, sediment, debris, or other removed pollutants.

iii. Log of Storm Drain Inlet/Designated Discharge Point Inspections, Maintenance and Cleaning: SRRQ shall prepare and maintain a log of the Storm Drain Inlet/Designated Discharge Point Inspections, Maintenance and Cleaning described herein (“Maintenance Log”). The Maintenance Log shall indicate the staff who completed the maintenance activity and when it was completed. The Log shall be made available for inspection by Baykeeper at any site inspection.

b. **Site Sweeping:** SRRQ shall mechanically sweep the accessible paved areas of the Facility at least two (2) times per day during the Wet Season and at least one (1) time per day during the remaining portion of the year (“Dry Season”) on each day that SRRQ is actively operating the Facility;

1 provided, however, that sweeping is not required when streets are wet. SRRQ shall keep a log or
2 checklist, as appropriate, of the on-site sweeping activity performed ("Sweeping Log"), and shall direct
3 employees and/or contractors to accurately complete the Sweeping Log. The Sweeping Log shall
4 indicate the employee or contractor who conducted the sweeping, the location of the sweeping, and the
5 dates the sweeping activities occurred. The Sweeping Log shall be made available for inspection by
6 Baykeeper at any site inspection.

7 c. **Abandoned or Inutile Equipment Storage and Removal:** SRRQ shall either store
8 under cover or remove from the Facility all abandoned or broken equipment or materials no longer
9 considered for future use that have the potential to serve as the source for pollutant loading.

10 d. **Vehicle and Equipment Management:** SRRQ shall continue to implement BMPs to
11 reduce or minimize pollutant release from equipment such as forklifts, hydraulic lifts, trucks, and other
12 heavy equipment that are parked or stored in areas of the Facility from which stormwater discharges.
13 Such BMPs shall include relocating the vehicles to better facilitate sweeping of paved areas, placing drip
14 pans under equipment stored or parked for a week or longer, monthly inspections for evidence of leaks
15 from such equipment, and prompt clean-up of spills, drips, or leaks from such equipment. Any spilled
16 substances and absorbent materials used in cleaning up spills shall be disposed of in accordance with all
17 local, state, and federal laws and regulations.

18 e. **Training:** Beginning within sixty (60) days after the Effective Date, and annually
19 thereafter, and within thirty (30) days of hiring of new employees, SRRQ shall conduct training for all
20 appropriate employees to explain the requirements of the Facility's SWPPP to the extent applicable to
21 such employee. Training shall focus on the employee's role in implementing various stormwater control
22 measures including, for example, implementation of BMPs, sweeping, vehicle maintenance, or facility
23 inspections. Training shall be conducted bilingually (*i.e.*, Spanish/English or other pertinent language)
24 to the extent that such employee is not reasonably able to comprehend training in English. If and when
25 appropriate, SRRQ shall integrate any new training requirements resulting from this Consent Decree
26 into the Facility SWPPP. SRRQ shall also update the SWPPP, if and when appropriate, to identify the
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positions responsible for carrying out stormwater management, monitoring, sampling, and SWPPP implementation.

5. **Structural Best Management Practices:** SRRQ shall develop and implement the following structural BMPs:

a. Outfall 1: SRRQ has enhanced the volumetric capacity of the multi-chambered sedimentation and detention basin at Outfall 1 ("OF1"), and installed rip rap to the sides of the basin, concrete weirs, and straw wattles around the entire basin. Within thirty (30) days of the Effective Date, SRRQ shall measure the volume of the existing detention basin at OF1, compare it against the respective water quality volumes ("WQV") contained in Exhibit 1, and submit the comparison to Baykeeper for review. If the existing capacity of the detention basin at OF1 is less than the recommended WQV, then, within thirty (30) days of comparison, SRRQ shall expand the detention basin's capacity to meet the recommended WQV contained in Exhibit 1.

b. Outfall 2: SRRQ has installed an un-engineered detention basin and check dam, combined with rip rap, straw bales, and silt fences at Outfall 2 ("OF2"). During the 2015-2016 wet season, SRRQ shall monitor the detention basin at OF2 to determine the effectiveness of the filtration and detention capacity of the detention basin. If Target Levels contained in Exhibit 2 are exceeded at OF2 during the 2015-2016 wet season, then prior to October 1, 2016, SRRQ shall reconstruct the detention basin in accordance with the recommended WQV contained in Exhibit 1, and incorporate a forebay into the detention basin to aid in coarse sediment removal.

c. Outfall 3: SRRQ has installed un-engineered detention basin and check dam, combined with rip rap, straw bales, and silt fences at Outfall 3 ("OF3"). Within thirty (30) days of the Effective Date, SRRQ shall relocate the monitoring/sampling point at OF3 closer to the point of discharge. Within thirty (30) days of completion of the relocation of the monitoring/sampling point at OF3, SRRQ shall submit to Baykeeper photographs of the relocated monitoring/sampling point, as well as a narrative description of the new location.

d. Outfall 4: SRRQ has increased street sweeping frequency and installed straw wattles along the road at Outfall 4 ("OF4"). Within thirty (30) days of the Effective Date, SRRQ shall

1 install additional straw wattles adjacent to the road, and consider enhanced sweeping. Upon
2 completion, SRRQ shall submit to Baykeeper photographs of the installed straw wattles. If Target
3 Levels contained in Exhibit 2 are exceeded at OF4 during the 2015-2016 wet season, SRRQ shall
4 construct a detention basin in accordance with the WQV contained in Exhibit 1.

5 **6. Maintenance of BMP Structural Controls:** Beginning on the Effective Date, SRRQ shall
6 maintain all structural BMPs at the Facility in good operating condition and shall promptly repair any
7 damaged or degraded structural BMPs.

8 **7. Amendment of SWPPP:** Within thirty (30) days of the Effective Date, SRRQ shall amend the
9 Facility SWPPP to incorporate the requirements and BMPs set forth in this Section I and thereafter
10 submit the updated SWPPP to Baykeeper within ten (10) business days. Baykeeper shall have thirty
11 (30) days from receipt of the amended SWPPP to propose any changes to the SWPPP. SRRQ shall in
12 good faith consider incorporating Baykeeper's reasonable comments into the SWPPP as such comments
13 relate to Defendant's compliance with the Consent Decree, and the Parties shall meet to discuss any
14 comments that are not incorporated. Compliance with the SWPPP, as amended in accordance with this
15 Paragraph provision, shall at all times be a requirement of this Consent Decree.

16 **II. SAMPLING, MONITORING, INSPECTION & REPORTING**

17 **8. Designated Discharge Points:** For purposes of this Consent Decree, the discharge points,
18 identified in Exhibit 3 and labeled "OF1," "OF2," "OF3," and "OF4" shall be the "Designated
19 Discharge Points."

20 **9. Sampling Program - Stormwater:** Beginning with the 2015-2016 Wet Season, subject to the
21 limitations set forth below, SRRQ shall collect and analyze stormwater samples from all of its
22 Designated Discharge Points according to the following sampling schedule:

23 a. SRRQ shall collect and analyze samples from the first two (2) qualifying storm events
24 ("QSEs") within the first half of each Wet Season during the term of this Consent Decree (October 1 to
25 December 31).

26 b. SRRQ shall collect and analyze samples from the first two (2) QSEs within the second
27 half of each Wet Season during the term of this Consent Decree (January 1 to May 31).

1 c. If SRRQ is unable to take a sample from any of the Designated Discharge Points during
2 any of the two (2) QSEs of the first half of the Wet Season or the first two (2) QSEs of the second half
3 of the Wet Season, SRRQ shall continue to sample from any subsequent storm events until four (4)
4 samples have been collected from each Designated Discharge Point in that Wet Season.

5 d. In the event that SRRQ is unable to collect four samples from each Designated Discharge
6 Point in a Wet Season, SRRQ shall explain in writing in the End-of-Season Summary under Paragraph
7 12 why they were unable to collect the required sample(s).

8 e. Each stormwater sample must be analyzed for the presence of each of the parameters
9 listed in Exhibit 2.

10 f. Should industrial processes materially change at the Facility, SRRQ shall conduct
11 sampling for any additional pollutants likely to be present in the Facility's stormwater discharges in
12 significant quantities as a result of the changed industrial processes. SRRQ shall notify Baykeeper of
13 any such changes within thirty (30) days of such a change.

14 10. **Certified Lab:** Except for pH samples, SRRQ shall have all stormwater samples collected
15 pursuant to this Consent Decree delivered to a California state certified environmental laboratory for
16 analysis within the time needed for analysis within laboratory method allowable hold times. The
17 laboratory shall thereafter conduct analysis sufficient to detect individual constituents at or below the
18 levels set forth in the attached Exhibit 2.

19 11. **Sample Result Reporting:** After the Effective Date, SRRQ shall provide complete results from
20 sampling and analysis to Baykeeper within ten (10) calendar days of receipt of the laboratory report
21 from each sampling event.

22 12. **End-of-Season Summary:** By July 15 following each Wet Season that occurs during the
23 Consent Decree, SRRQ shall prepare and send to Baykeeper an End-of-Season Summary that includes:
24 (1) a summary chart with all of the sample results from the previous Wet Season including the
25 constituent concentration(s) from Designated Discharge Point sample(s) collected at the Facility
26 exceeding the Target Levels in Exhibit 2 ("Exceedance(s)"); and (2) identification of any new BMP(s)
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1 that SRRQ has implemented or will implement not already discussed in a prior End-of-Season Summary
2 or Action Plan for the immediately prior Wet Season.

3 13. **Action Plan:** If stormwater sample results during a Wet Season exceed any Target Level set
4 forth in Exhibit 2 in either of the two following ways, SRRQ shall submit an Action Plan in addition to
5 an End-of-Season Summary by July 15:

6 a. Annual Target Level exceedance: SRRQ shall determine the average concentration for
7 each parameter using the results of all of the sampling and analytical results for the entire Facility for the
8 reporting year (*i.e.*, all "effluent" data). SRRQ shall compare the average concentrations for each
9 parameter to the Target Levels set forth in Exhibit 2. An annual Target Level exceedance occurs when
10 the average of all the analytical results for a parameter's samples taken within a reporting year exceeds
11 the Target Level value for that parameter listed in Exhibit 2; or

12 b. Instantaneous Target Level exceedance for pH, total suspended solids, and oil and grease:
13 SRRQ shall compare all sampling and analytical results from each distinct sample to the corresponding
14 Target Level values in Exhibit 2. An instantaneous maximum Target Level exceedance occurs when
15 two (2) or more analytical results from samples taken for any single parameter within a reporting year
16 exceed the instantaneous maximum Target Level value.

17 14. **Contents of Action Plan:** If an Action Plan is required, it shall include the following:

18 a. The possible sources of the Exceedance(s) during the applicable Wet Season;

19 b. An evaluation of the corresponding BMPs in the SWPPP and any additional BMPs and
20 SWPPP revisions necessary to reduce pollutants in future stormwater discharges to the Target Levels in
21 Exhibit 2 and/or to achieve BAT and BCT for those constituents; and

22 c. Based on the evaluation, SRRQ shall, as soon as practicable but no later than October 1
23 of the next Wet Season,
24 revise the SWPPP as necessary and implement any additional BMPs identified in the evaluation;

25 ii.

26 15. **Baykeeper Review of Action Plan:** Baykeeper shall have thirty (30) days from receipt to
27 propose revisions to the Action Plan. However, if Baykeeper notifies SRRQ within thirty (30) days of
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1 receipt of the Action Plan that it is unable to provide comments within thirty (30) days, Baykeeper shall
2 have an additional fifteen (15) days to propose revisions to the Action Plan. Within thirty (30) days of
3 receiving Baykeeper's proposed revisions, SRRQ shall agree or disagree with the proposed revisions. If
4 there is disagreement, SRRQ shall provide to Baykeeper explanations as to why any requested revisions
5 were not adopted. Any disputes may be resolved per the dispute resolution provisions of Paragraph 24.

6 **16. Implementation of Action Plan:** SRRQ shall implement the Action Plan(s) adopted pursuant to
7 this Consent Decree as an obligation of this Consent Decree.

8 **17.** Within thirty (30) days after BMPs set forth in an Action Plan pursuant to this Consent Decree
9 are implemented, SRRQ shall amend the Facility SWPPP to include all BMP revisions or additions not
10 otherwise already implemented and included in the SWPPP. Within thirty (30) days thereafter, SRRQ
11 shall provide Baykeeper with a copy of such revised SWPPP.

12 **18. Stipulated Payments:** SRRQ shall pay the following stipulated payments during the Term of
13 this Consent Decree.

14 a. \$250 for each failure to collect a sample required under this Consent Decree during the
15 Wet Season beginning with the 2015-2016 Wet Season;

16 b. \$250 per day after the report due date for each failure to timely submit any document,
17 report or other communication required in this Consent Decree; and

18 c. \$250 per day payment for every business day (Monday through Friday, excluding state
19 and federal holidays) past the due date that SRRQ fails to submit any payments due under Paragraphs
20 21-22 of this Consent Decree.

21 d. In no event shall SRRQ be obligated to pay more than \$2,000.00 in stipulated penalties
22 pursuant to this Section 18 in any calendar year.

23 e. Any stipulated payments described above shall be paid to Baykeeper within thirty (30)
24 days of notification of the failure to comply.

25 **19. Site Access:** During the Term of this Consent Decree, SRRQ shall permit representatives of
26 Baykeeper to perform up to one (1) physical inspection per year of the Facility during operating hours
27 ("Site Inspection"). Baykeeper shall provide SRRQ at least seventy-two (72) hours' notice in advance
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1 of such Site Inspection. Baykeeper shall comply with all safety instructions provided to Baykeeper by
2 SRRQ's staff during all Site Inspections. During Site Inspections, Baykeeper shall be allowed to inspect
3 any stormwater discharges, logs, and take photos and/or videos.

4 20. **Reports:** During the Term of this Consent Decree, SRRQ shall provide Baykeeper with a copy
5 of all documents required to be submitted to the Regional Water Board or the State Water Board
6 concerning the Facility's compliance with the Industrial Stormwater Permit. Such documents and
7 reports shall be transmitted to Baykeeper via electronic mail at the time the documents are submitted to
8 the Regional Water Board or State Water Board.

9 **III. FEES AND COSTS**

10 21. **Reimbursement of Fees and Costs:** SRRQ shall reimburse Baykeeper in the amount of twenty-
11 five thousand dollars (\$25,000.00) to help cover Baykeeper's reasonable investigation, expert, and
12 attorneys' fees and costs, and all other reasonable costs incurred as a result of investigating the activities
13 at the Facility related to this Consent Decree, bringing these matters to SRRQ's attention, and
14 negotiating a resolution of this action. SRRQ shall tender said payment, payable to Baykeeper, within
15 thirty (30) days of the Effective Date.

16 22. **Compliance Monitoring Funds:** SRRQ shall provide to Baykeeper a total of six thousand
17 dollars (\$6,000.00) for costs and fees associated with monitoring SRRQ's compliance with this Consent
18 Decree through the termination date of this agreement, payable in three (3) payment installments of two
19 thousand dollars (\$2,000.00) each. The first monitoring fund payment shall be made payable to
20 Baykeeper within thirty (30) days after the Effective Date. The second monitoring fund payment shall
21 be made payable to Baykeeper by January 15, 2017. The third monitoring fund payment shall be made
22 payable to Baykeeper by January 15, 2018.

23 23. **Interest on Late Payments:** SRRQ shall pay interest on any payments, fee or costs owed to
24 Baykeeper under this Consent Decree that Baykeeper has not received by the date due. The interest
25 shall accrue starting the first day after the payment is due and shall be computed at 1.5% per month
26 (18% per year).

1 **24. Dispute Resolution:** The dispute resolution procedure of this Section shall be the exclusive
2 mechanism for resolving any disputes arising under this Consent Decree.

3 a. To invoke dispute resolution, a Party must provide written notice to the other Party
4 within thirty (30) days of the occurrence of the alleged breach of this Consent Decree and no later than
5 thirty (30) days following the Termination Date. This notice shall include all reasons the Party has for
6 raising the disputed issue. Within thirty (30) days of receiving written notification, the other Party shall
7 provide a written response, and the Parties shall thereafter meet and confer within ten (10) days of such
8 response. Failure of any party to fulfill this notification or response requirement shall constitute a
9 waiver of the Party's right to dispute the issue. If the parties cannot resolve a dispute within thirty (30)
10 days of either Party terminating the meet and confer negotiations, the Party that raised the dispute may
11 file a motion with the Court to invoke the alternative dispute process as provided below.

12 b. The Parties agree to participate in court-sponsored alternative dispute resolution within
13 sixty (60) days of the end of the meet and confer process. Thereafter, the party initiating the dispute
14 resolution provision may invoke formal dispute resolution by filing a motion before the Court to enforce
15 the Consent Decree. The Parties agree to request an expedited hearing schedule on any motion.

16 c. For any motion filed with the court under this Section, the Court may award costs of
17 litigation (including reasonable attorney and expert witness fees) to the prevailing party or substantially
18 prevailing party as provided under the Clean Water Act ("CWA") at 33 U.S.C. Section 1365(d).

19 **IV. JURISIDCTION OVER PARTIES AND SUBJECT MATTER OF CONSENT DECREE**

20 **25. Jurisdiction.** For the purposes of this Consent Decree, the Parties stipulate that the United
21 States District Court of California, Northern District of California, has jurisdiction over the Parties and
22 subject matter of this Consent Decree. The Parties stipulate that venue is appropriate in the Northern
23 District of California and that SRRQ will not raise in the future as part of enforcement of this Consent
24 Decree whether Baykeeper has standing to bring the Complaint or any subsequent action or motion
25 pursuant to the Dispute Resolution procedures herein. SRRQ reserves all other rights and defenses in
26 any such proceeding.
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1 **26. Jurisdiction to Enforce Consent Decree.** The Court referenced above shall retain jurisdiction
2 over the Parties and subject matter of this Consent Decree for the purpose of adjudicating all disputes
3 among the Parties that may arise under the provisions of this Consent Decree. The Court shall have the
4 power to enforce this Consent Decree with all available legal and equitable remedies.

5 **27. Submission of Consent Decree to DOJ.** Within three (3) business days of receiving all of the
6 Parties' signatures to this Consent Decree, Baykeeper shall submit this Consent Decree to the U.S.
7 Department of Justice ("DOJ") and EPA for agency review consistent with 40 C.F.R. § 135.5. The
8 agency review period expires forty-five (45) calendar days after receipt by the DOJ, evidenced by
9 correspondence from DOJ establishing the review period. In the event DOJ comments negatively on the
10 provisions of this Consent Decree, the Parties agree to meet and confer to attempt to resolve the issues
11 raised by DOJ.

12 **V. WAIVER AND RELEASES**

13 **28. Baykeeper Waiver and Release of Noticed Parties:** Baykeeper, on its own behalf and on
14 behalf of its officers, directors, employees, agents, attorneys of record, other representatives, parents,
15 subsidiaries, affiliates and each of their successors and assigns ("Baykeeper's Related Parties") releases
16 SRRQ, its officers, directors, employees, members, parents, subsidiaries, affiliates, successors or
17 assigns, agents, attorneys and other representatives ("Related Parties") from and for, and irrevocably
18 waives all claims, including all claims for injunctive relief, penalties, fees (including fees of attorneys,
19 experts, and others), costs, expenses, or any other sum incurred or claimed, known or unknown, past or
20 present, ascertained or unascertained, suspected or unsuspected, absolute or contingent, based on the
21 facts or claims alleged in this matter, including, but not limited to, the facts or claims alleged in the 60-
22 Day Notice and/or the Complaint related to any events alleged to have occurred on or before the
23 Termination Date. Without limiting the foregoing, Baykeeper represents on behalf of itself and
24 Baykeeper's Related Parties that this Consent Decree resolves all claims, including alleged violations of
25 the CWA or the Industrial Stormwater Permit associated with the Facility, that could have been made by
26 Baykeeper against SRRQ or SRRQ's Related Parties before the Effective Date. Baykeeper, on behalf of
27 itself and Baykeeper's Related Parties, covenants not to sue SRRQ or SRRQ's Related Parties for any
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1 actual, alleged, or continuing violations of the CWA, the Industrial Stormwater Permit, or alleged in the
2 60-Day Notice and/or the Complaint, alleged to have occurred at the Facility on or before the
3 Termination Date. Baykeeper agrees not to provide any information obtained through this Consent
4 Decree, that is not otherwise publically available, to any third party.

5 **29. SRRQ's Waiver and Release of Baykeeper:** SRRQ, on its own behalf and on behalf of
6 SRRQ's Related Parties release Baykeeper and Baykeeper's Related Parties from, and waive all claims
7 which arise from or pertain to, the 60-Day Notice and/or the Complaint, including all claims for fees
8 (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed
9 or which could have been claimed for matters included in the 60-Day Notice and/or the Complaint.

10 **30. Civil Code Section 1542:** To the extent the Court finds that California Civil Code Section 1542
11 applies to this Consent Decree, the Parties expressly waive any rights or benefits available to them under
12 the provisions of California Civil Code Section 1542, which provides as follows:

13 A general release does not extend to claims which the creditor does not know or suspect
14 to exist in his or her favor at the time of executing the release, which if known by him or
15 her must have materially affected his or her settlement with the debtor.

16 **VI. MISCELLANEOUS PROVISIONS**

17 **31. Effective Date:** The Effective Date of this Consent Decree shall be the last day for the U.S.
18 Department of Justice to provide comment on this Consent Decree, i.e., the 45th day following the U.S.
19 Department of Justice's receipt of the Consent Decree.

20 **32. Term of Consent Decree:** This Consent Decree shall continue in effect until October 1, 2018
21 (the "Term"), at which time the Consent Decree, and all obligations under it, shall automatically
22 terminate.

23 **33. Early Termination:** If SRRQ should cease industrial operations at the site and file a Notice of
24 Termination ("NOT") under the Industrial Stormwater Permit prior to the termination date of this
25 Consent Decree, SRRQ shall send Baykeeper a copy of the proposed NOT concurrent with its submittal
26 to the Regional Water Board. Within ten (10) days of the Regional Water Board's approval of the NOT,
27 SRRQ shall notify Baykeeper in writing of the approval and remit all outstanding payments, including
28 stipulated payments, to Baykeeper. In the event a new successor or assign continues industrial

1 operations at the site and assumes responsibility for implementation of this Consent Decree pursuant to
2 Paragraph 44, SRRQ shall notify Baykeeper within ten (10) days of the transition.

3 34. **Execution in Counterparts:** The Consent Decree may be executed in one or more counterparts
4 which, taken together, shall be deemed to constitute one and the same document.

5 35. **Signatures:** The Parties' signatures to this Consent Decree transmitted by facsimile or
6 electronic mail transmission shall be deemed binding.

7 36. **Construction:** The language in all parts of this Consent Decree, unless otherwise stated, shall be
8 construed according to its plain and ordinary meaning. The captions and paragraph headings used in
9 this Consent Decree are for reference only and shall not affect the construction of this Consent Decree.

10 37. **Authority to Sign:** The undersigned are authorized to execute this Consent Decree on behalf of
11 their respective Party and have read, understood and agreed to all of the terms and conditions of this
12 Consent Decree.

13 38. **Integrated Consent Decree:** All agreements, covenants, representations and warranties, express
14 or implied, oral or written, of the Parties concerning the subject matter of this Consent Decree are
15 contained herein.

16 39. **Severability:** In the event that any of the provisions of this Consent Decree are held by a court
17 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

18 40. **Choice of Law:** This Consent Decree shall be governed by the laws of the United States or,
19 where applicable, the laws of the State of California.

20 41. **Full Settlement:** This Consent Decree constitutes a full and final settlement of this matter.

21 42. **Negotiated Agreement:** The Parties have negotiated this Consent Decree, and agree that it shall
22 not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared
23 this Consent Decree, and any uncertainty and ambiguity shall not be interpreted against any one party.

24 43. **Modification of the Agreement:** This Consent Decree, and any provisions herein, may not be
25 changed, waived, or discharged unless by a written instrument signed by each of the Parties.
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1 **44. Assignment:** Subject only to the express restrictions contained in this Consent Decree, all of the
2 rights, duties and obligations contained in this Consent Decree shall inure to the benefit of and be
3 binding upon the Parties, and their successors and assigns.

4 **45. Mailing of Documents to Baykeeper/Notices/Correspondence:** Any notices or documents
5 required or provided for by this Consent Decree or related thereto that are to be provided to Baykeeper
6 pursuant to this Consent Decree shall be, to the extent feasible, sent via electronic mail transmission to
7 the e-mail addresses listed below or, if electronic mail transmission is not feasible, via certified U.S.
8 Mail with return receipt, or by hand delivery to the following address:

9 San Francisco Baykeeper
10 Attention: Nicole Sasaki
11 1736 Franklin Street, Suite 800
12 Oakland, CA 94612
13 E-mail: nicole@baykeeper.org

14 Unless requested otherwise by SRRQ, any notices or documents required or provided for by this
15 Consent Decree or related thereto that are to be provided to SRRQ pursuant to this Consent Decree shall,
16 to the extent feasible, be provided by electronic mail transmission to the e-mail addresses listed below,
17 or, if electronic mail transmission is not feasible, by certified U.S. Mail with return receipt, or by hand
18 delivery to the addresses below:

19 The Dutra Group
20 Attention: Molly F. Jacobson
21 2350 Kerner Blvd., Ste. 200
22 San Rafael, CA 94901
23 Email: mjacobson@dutragroup.com

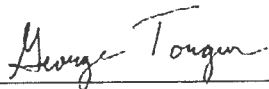
24 Notifications of communications shall be deemed submitted on the date that they are emailed, or
25 postmarked and sent by first-class mail or deposited with an overnight mail/delivery service. Any
26 changes of address or addressees shall be communicated in the manner described above for giving
27 notices.
28

1 **49. Impossibility of Performance:** No Party shall be considered to be in default in the performance
2 of any of its obligations under this Consent Decree when performance becomes impossible due to
3 circumstances beyond the Party's control, including without limitation any act of God, act of war or
4 terrorism, fire, earthquake, windstorm, flood, or natural catastrophe, civil disturbance, vandalism,
5 sabotage, restraint by court order or public authority or agency, action or non-action by, or inability to
6 obtain the necessary authorizations or approvals from any governmental agency. "Circumstances
7 beyond the Party's control" shall not include normal inclement weather, economic hardship, or inability
8 to pay. Any Party seeking to rely upon this Paragraph shall have the burden of establishing that it could
9 not reasonably have been expected to avoid, and which by exercise of due diligence has been unable to
10 overcome, the impossibility of performance.

11
12 The settling Parties hereto enter into this Consent Decree, Order and Final Judgment and submit it to the
13 Court for its approval and entry as a final judgment.

14
15 SAN FRANCISCO BAYKEEPER

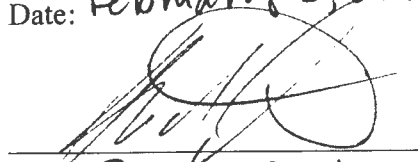
16 Date: January 15, 2016

17
18 

19 George Torgun
20 Managing Attorney, San Francisco Baykeeper

21
22 San Rafael Rock Quarry, Inc.

23 Date: February 5, 2016

24
25 

26 By: Bill T. Dutra
27 Title: CEO

1 APPROVED AND SO ORDERED, this ____ day of ____.

2
3 UNITED STATES DISTRICT JUDGE

4
5 _____
6 Honorable Maxine M. Chesney
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EXHIBIT 1

Water Quality Volumes for Dry Detention Basins at each of the Facility catchment areas

Catchment	Drainage Area (acres)	Imperviousness	Runoff Coefficient	WQV (acre feet)	WQV (cubic feet)
1	4.63	12%	0.12	0.074	3,241.2
2	5.82	4%	0.07	0.054	2,393.0
3	2.93	21%	0.18	0.067	2,934.4
4 (all)	28.60	2%	0.06	0.216	9,442.6
4 (road only)	0.67	100%	0.89	0.078	3,418.8

EXHIBIT 2

Target Levels for Stormwater Sampling

Constituent	Target Levels	Instantaneous Maximum Target Levels	Source
Total Suspended Solids	100 mg/L	400 mg/L	<i>Multi-Sector General Permit 2015 Sector-specific benchmark; California Industrial General Permit 2014-0057-DWQ</i>
pH	6.0-9.0 SU	6.0-9.0 SU	<i>Multi-Sector General Permit 2015 Sector-specific benchmark; California Industrial General Permit 2014-0057-DWQ</i>
Oil and Grease	15 mg/L	25 mg/L	<i>Multi-Sector General Permit 2000 benchmark; California Industrial General Permit 2014-0057-DWQ</i>
Total Iron	1.0 mg/L	N/A	<i>Multi-Sector General Permit 2015 Sector-specific benchmark; California Industrial General Permit 2014-0057-DWQ</i>
Nitrate + Nitrite Nitrogen	0.68 mg/L	N/A	<i>Multi-Sector General Permit 2015 Sector-specific benchmark; California Industrial General Permit 2014-0057-DWQ</i>

EXHIBIT 3

